BERORE THE NATIONAL LABOR RELATIONS BOARD
OF THE UNITED STATES OF AMERICA

UNIVERSITY OF CHICAGO	)	
	)	
Employer,	)	
	)	
and	)	**Case No. 13-RC-198365**
	)	
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 743	)	
	)	
Petitioner	)	

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 743'S STATEMENT IN OPPOSITION TO UNIVERSITY OF CHICAGO'S REQUEST FOR REVIEW AND MOTION TO STAY THE ELECTION AND/OR IMPOUND BALLOTS OR FOR REMAND TO THE REGIONAL DIRECTOR

Amanda Clark
Matt Jarka
Asher, Gittler & D'Alba, Ltd.
200 W. Jackson Blvd., Ste. 1900
Chicago, Illinois 60606
312.263.1500 (phone)
312.263.1520 (fax)

Attorneys for Petitioner
International Brotherhood of Teamsters, Local 743

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I. INTRODUCTION

Petitioner, International Brotherhood of Teamsters, Local 743 (hereinafter "Local 743") files this statement in opposition to the University of Chicago's (hereinafter "U of C" or "Employer") Expedited Request For Review And Motion to Stay the Election and/or Impound Ballots or, In the Alternative, For Remand to the Regional Director (hereinafter "Request for Review"). The issues sought to be raised by the Employer on review are matters that are clearly settled by National Labor Relations Board (hereinafter "Board") precedent in *Columbia University*, 364 NLRB No. 90 (2016) (hereinafter "*Columbia*"), and the Employer has raised no sufficient reason to re-litigate these matters or attempted to distinguish this case from the precedential *Columbia* decision.

Furthermore, the Employer has presented no sufficient basis for the extraordinary relief it seeks. Under Board rules, elections are intended to be expeditious. The Employer here seeks to delay the election but has not made "a clear showing that it is necessary under the specific circumstances of this case." Rule 102.67. Additionally, as the Employer admits in its Request for Review, the petitioned for workers will be on campus during the election period, as it is read period and finals period for all students. More importantly, the petitioned for workers are still required to work hours at the libraries during read period and finals period, as the Employer admitted at hearing. Therefore issues raised by the Employer in its Request for Review were decided correctly by the Regional Director, and no review is necessary.

II. THE REGIONAL DIRECTOR'S DECISION WAS NOT ERRONEOUS

The Employer has failed to provide compelling reasons for the Board to review the Regional Director's DDE. The standard for review, according to Section 102.67(d) states in whole:

> (d) *Grounds for review*. The Board will grant a request for review only where compelling reasons exist therefor. Accordingly, a request for review may be granted only upon one or more of the following grounds:
>
> (1) That a substantial question of law or policy is raised because of: (i) The absence of; or (ii) A departure from, officially reported Board precedent.
>
> (2) That the Regional Director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party.
>
> (3) That the conduct of any hearing or any ruling made in connection with the proceeding has resulted in prejudicial error.
>
> (4) That there are compelling reasons for reconsideration of an important Board rule or policy. (emphasis added)

Section 102.67(d)

The Employer, while ignoring the compelling requirement set forth in the rules, has asserted that three grounds exist for the review in this matter based on 102.67(d) (2), (3) or (4). However, upon examination of the facts of this case, no compelling reasons exist for review on any of these grounds.

A. There is No Clearly Erroneous Substantial Factual Error in the Regional Director's Decision and Direction of Election

The Regional Director did not err in the determinations contained in his DDE. While the Employer seeks to anchor its argument for errors in the analysis formerly used under *Brown University*¸ such an argument is not sufficient to prove an erroneous error and serve as a compelling reason for granting review. 342 NLRB 483 (2004).

1. The Region Director's employee status determination is not clearly erroneous

The Employer's argument in this matter rests solely on its contention that the Board decided *Columbia* incorrectly. However, under the standards of *Columbia*, which is clearly controlling Board precedent on this matter, it is clear that the Regional Director made no error in

his determination that petitioned for workers are employees. The Employer does not deny that there is an economic relationship between the student workers and the University. Under the analysis of *Columbia*, such an economic relationship is sufficient for the workers to fall under the auspice of the Act. 364 NLRB No. 90, p. 4. The University has not denied that they pay the student library workers, and therefore, the common law test for employment relationship is satisfied.

The Employer in this matter did not contest that a common law employment relationship existed. As such, the test for Section 2(3) employee status, as promulgated under *Columbia*, was satisfied. The Regional Director made no clearly erroneous factual determination when considering the Employer's offer of proof under controlling Board law. Therefore, there is no compelling reason to grant the Employer's request for review.

2. The Region Director's did not make a clearly erroneous error in determining the employees are not temporary/casual

The Regional Director was again following clear Board precedent when he determined that the employees at issue in the current matter are not temporary employees. The Board, in *Columbia*, clearly addressed the matter of student workers as temporary employees and rejected such an argument. The Employer is this case has raised no arguments which would exempt these employees from the analysis in *Columbia* or any new arguments which would require a hearing on the matter. Therefore, the Regional Director's determination was not clearly erroneous and there is no compelling reason to grant its request for review.

In *Columbia*, the Board squarely addressed arguments that student employees were temporary. 364 NLRB No. 90, p. 20-21. In that case, the Board noted that all the employees in the proposed unit served finite terms of employment, but that a finite tenure alone is not sufficient to show temporary status. *Id.* at 20. Instead, the Board stated, the focus of the analysis

must be on whether or not the unit employees share a community of interest. *Id.* The Board, in *Columbia*¸ found that the finite terms of the proposed unit were not sufficient to show a "divergence of interests that would frustrate collective bargaining. *Id.* Nor did the Board find a semester at Columbia University was an arbitrary period, and that Columbia would continuously employ groups of student workers with carryover, the proposed unit "form[ed] a stable unit capable of engaging in meaningful collective bargaining." *Id.* at 21.

In its request for review, the Employer argues that students are hired for a definite term. (Request for Review, p. 14). However, this alone, as the Board in *Columbia* stated, is not enough to establish temporary status. A limit on the students' hours, similarly, is not sufficient to establish a temporary employee status, but instead shows control of the working conditions by the Employer. Nor do the Employer's argued distinctions between the student workers and other non-student library staff raise a sufficient issue to find erroneous error. The petitioned for unit does not seek to combine non-student and student workers. Most importantly, the Employer raised not argument regarding the community of interest shared by the petitioned for employees. Therefore, any argument regarding the differences between those two groups does not demonstrate a lack of community of interest among the petitioned for unit.

None of the Employer's arguments show that the Regional Director made an erroneous factual decision, let alone a clearly erroneous decision, as required by the rules. Therefore, the Employer has not offered a sufficiently compelling reason to grant its Request for Review.

B. The Regional Director Correctly Rejected The University's Offer Of Proof

There was no prejudicial error in the Regional Director determination requiring an Offer of Proof from the University, and his subsequent rejection of that offer of proof. Under the Board's rules, the Regional Director "may solicit offers of proof" from the parties and, if the

Regional Director "determines that the evidence described in an offer of proof is insufficient to sustain the proponent's position, the evidence shall not be received." Rule 102.66(c). In this matter, the Regional Director was well within his powers to request an offer of proof from the Employ. He was also well within his power to determine that the Offer of Proof supplied by the Employer was insufficient to sustain its position and not permit the evidence to be received. Therefore, there was not prejudicial error to the Employer, and no compelling reason for granting its Request for Review exists.

The Employer argues that its rights under Rule 102.66(a) were violated. However, the Employer was allowed to appear in person at the hearing. Its claimed right to call, examine and cross-examine witnesses, and to introduce evidence into the record, however, is not limitless. Rule 120.66(c) presents a potential limit to the right to present witnesses and evidence. If the Regional Director requests an Offer of Proof and that Offer of Proof is found insufficient to support the claim, the party does not maintain an unlimited right to present evidence. The Regional Director in the instant matter asked for an offer of proof and the Employer provided such an offer of proof on both the issue of Section 2(3) and temporary employee status. The Regional Director found that it was insufficient to support the Employer's case.

The Employer's argument in its Request for Review that the Hearing Officer stated that the Offer of Proof was rejected because there is established Board law on the matter, and that the DDE stated that it was insufficient to sustain the Employer's contentions does is not prejudicial to the Employer. The Employer has offered no argument how the statement by the Hearing Officer was prejudicial. The Regional Director stated in his DDE and at the time he reviewed the Offer of Proof, he found it insufficient. He affirmed that finding in the DDE. As stated above in Section A(1) and (2) of this Statement, the Employer did not offer sufficient facts under Board

law to support its contentions. The Regional Director followed the Board's rules in this matter and the Employer suffered not prejudicial error.

The Regional Director did not commit a prejudicial error when he followed the Board's rules, requested an offer of proof, found the offer of proof to be insufficient and did not allow the Employer to put on evidence on the matters.

C. The Timing of The Election Does Not Create Prejudicial Error or Disenfranchise Voters

There is nothing about the timing of the Regional Director's DDE or the election itself that is prejudicial to the Employer or will disenfranchise the employee voters. The facts, as the exist, completely undercut the Employer's argument that it's due process rights have been denied, or that student voters are potentially disenfranchised by the scheduled dates for the election.

The Employer's claim that its due process rights were denied by the timing of the Regional Director's DDE and the scheduled election is simply not supported by the facts of this case. The purpose of the Board's amended election rules is to conduct an expedited election process. Rule 102.67. Under the Board's election rules, there is no time requirement for the Regional Director to issue his opinion. In this matter, he issued his opinion within one week of the hearing, inclusive of a weekend. This can hardly be characterized as a "late-issued decision" as the Employer seeks to make it. There was no prejudicial error in the Regional Director's timing.

Furthermore, the Employer points to the fact that there are six days between the issuance of the DDE and the election. This comports with the Board's new election rules and does not violate the Employer's due process. The Regional Director, per the Board's rules, is to schedule the election for the earlies practicable date. Rules 102.67. The Employer was still able to file a

Request for Review and the Board's rules have been complied with. There is no damage to the Employer's due process rights as provided for under the Board's rules.

This scheduling also does not interfere with the student workers ability to vote. The student workers in the petitioned for unit are still *required* to work during the reading and finals period. The Employer admitted that these employees are required to work during reading and finals period. Request for Review, Ex. 3, p. 17. While the Employer attempts to make several arguments about the limited availability of the student workers, it cannot deny that the student workers are still required to work at their jobs during the Election period. The election cites, themselves are held at two of the libraries, allowing employees easy access to the polling place during their required working hours. This fact alone, completely undercuts the Employer's argument that the student workers would be disenfranchised. Therefore, there is no prejudice to the Employer or the Student workers, and, therefore, no basis on which to grant the extraordinary relief the Employer seeks in its request for review.

D. The Employer Has Not Proved Circumstances for Extraordinary Relief

There are no particular circumstances of this case which support a finding of extraordinary relief. The status of student workers as employees is clearly established by Board precedent in the *Columbia* case. 364 NLRB No. 90. Under the *Columbia* precedent, which specifically overturned the cases relied upon by the Employer, the student workers subject to the current petition are clearly employees of the Employer and are entitled to an election and their Section 7 rights.

Nor does the election threaten to disenfranchise potential voters, as the Employer, itself, requires them to be at work during the scheduled election times. The Employer cannot require these employees to work, but then say that their focus during this time is on studying and finals

only. Such an argument is contradictory at its base and cannot does not clearly show any particular circumstances that validate extraordinary relief.

III. CONCLUSION

The Regional Director's DDE was decided correctly under Board law. The Employer has raised no compelling reasons for review in this matter. The status of student workers as employees is clear under Board precedent and the Regional Director's DDE in this matter recognized that. There is no threat of disenfranchisement to the potential voters, as the Employer requires them to work during the scheduled election period, and the polling places are located within work sites for the student workers. Furthermore, the Employer has filed to establish that the extraordinary relief it seeks is required under the particular circumstances of this case.

The Employer has failed to carry its burden in this matter and the student workers at question are entitled to exercise their rights under the Act. Therefore, Local 743 respectfully requests that the Request for Review be denied.

Respectfully submitted,

/s/ Amanda R. Clark_____
Amanda R. Clark

Attorney for International Brotherhood of Teamsters, Local 743